



भारत का राजपत्र The Gazette of India

सी.जी.-डी.एल.-सा.-29082022-238433
CG-DL-W-29082022-238433

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY
साप्ताहिक
WEEKLY

सं. 34] नई दिल्ली, अगस्त 21—अगस्त 27, 2022, शनिवार/श्रावण 30—भाद्र 5, 1944
No. 34] NEW DELHI, AUGUST 21—AUGUST 27, 2022, SATURDAY/SRAVANA 30—BHADRA 5, 1944

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

श्रम और रोजगार मंत्रालय

नई दिल्ली, 22 अगस्त, 2022

का.आ. 768.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इलाहाबाद बैंक के प्रबंधतंत्र, संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण—सह—श्रम न्यायालय, कानपुर के पंचाट (संदर्भ सं. 40/2006) को प्रकाशित करती है।

[सं. एल-12012/284/96-आईआर-(बी-II)]
राजेन्द्र सिंह, अवर सचिव

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 22nd August, 2022

S.O. 768.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 40/2006) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court*, Kanpur shown in the Annexure, in the industrial dispute between the management of Allahabad Bank and their workmen.

[No. L-12012/284/96-IR(B-II)]

RAJENDER SINGH, Under Secy.

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL—CUM-LABOUR COURT, KANPUR****PRESENT :** SOMA SHEKHAR JENA, HJS (Retd.)**I.D. No. 40/2006****Ref. No. L-12012/284/96-IR(B-II)**

dated: 15.05.2006

BETWEEN :

Mohd. Mehtab Alam S/o Mohd. Shaukat Ali
99/187, BegamGunj, PS Bajaria
Kanghi Mohal,
Kanpur

AND

The Assistant General Manager,
Allahabad Bank,
Swarup Nagar,
Kanpur

AWARD

This award arises in respect of the reference notification communicated to this Tribunal by letter no. L-12012/284/96-IR(B-II) issued by the Government of India Ministry of Labour as mentioned in the Schedule below:

“Whether the action of the management of Allahabad Bank in terminating the service of Shri Mohd. Mehtab Alam, Driver/ Peon w.e.f. 15.06.1995 is legal and justified? If not, to what relief the disputant concerned is entitled?”

The averments of the workman (Mohd. Mehtab Alam) in his Claim Statement are summarized as follows:

Workman was engaged to drive car with Reg. No. UP 78 E 4128 then registered in the name of the Zonal Office of Allahabad Bank and workman was allotted to the Asst. General Manager of the Bank. Initially workman was paid Rs. 1310 which was later enhanced to Rs. 1560. Workman had discharged his duty to the satisfaction of the management of the bank. His normal duty started at 9 AM when he used to pick up the Asst. General Manager of the Bank from his residence and drove the car to the office. It is averred that he also worked for 10 to 12 hours every day but was not given wages for the Over-time. He had worked from 20/11/1991 up to 15/06/1995 regularly and he had done work for 240 days in the preceding 12 months of his date of termination. It is averred by the workman that he used to fill up the log book of the car which was counter-signed and verified by the Asst. General Manager and he was entrusted with the work of getting the car regularly repaired. He participated in the blood donation camp organized by the bank which was his employer. It is further averred that he was engaged on election duty as bank employee. All on a sudden the management of the bank without assigning any reason and without issuing notice of retrenchment or pay and compensation terminated his engagement. It is stated by the workman that his disengagement by the bank was illegal. It is asserted by the workman that with the Allahabad Bank there was employer-employee relationship. On behalf of the O.P. Allahabad Bank which was later merged with Indian Bank. Written statement has been submitted which may be concisely stated as follows:

O.P. bank denied appointment of the workman in the bank at any point of time. O.P. Bank was providing vehicles to the Asst. General Manager for the sake of convenience. There was no control of the bank over the workman at any point of time. There are rigid rules for

appointment of driver in Public Sector Bank. By and large O.P. Bank has taken the stand that no appointment letter was issued by O.P. in favour of the claimant workman as its driver or staff.

The points to be answered in this proceeding are as follows:

1. Whether the claimant workman was employee of the Bank.
2. Whether the so called termination or disengagement of the workman was legally justifiable.
3. To what other relief the claimant workman is legally entitled.

For the sake of convenience point 1 and 2 are taken up together for discussions.

It is pertinent to state here that on behalf of the claimant copy of the driving license, copies of the log book of the car with registration no. UP 78 E 4178.

Insurance certificate issued in respect of the car, copy of the car pass have been produced. The aforesaid documents otherwise substantiate that the car with registration no. UP 78 E 4128 belonged to the Allahabad Bank. No document establishing that claimant Mohd. Mehtab Alam was selected as driver or staff of the erstwhile Allahabad Bank has been proved in course of hearing. In other words, there is no documentary evidence that the claimant was selected to work as staff or driver of the erstwhile nationalized Allahabad Bank has been proved. It may be correct that the claimant at one point of time did the commendable job of participating in blood donation camp organized under the auspices of the Allahabad Bank. The documents of the claimant side are not sufficient to prove that he was selected as driver or staff of the erstwhile Allahabad Bank. At this point it is relevant to state here that the person engaged by an officer of the Bank getting perquisites towards car allowance for driving car of the Bank does not automatically become a driver or staff of the nationalized Bank unless rules permit. In the absence of specific rules it cannot be accepted that the person engaged by the officer of the nationalized bank will become staff of the concerned Bank. The Hon'ble Supreme Court in State of Karnataka a through its Secretary Versus Uma Devi have disapproved such kind of back door entry in any Government controlled establishment.

There is paucity of evidence to prove that Bank had any control over the workman with employer-employee relationship.

On behalf of the workman the Case Law 2007 113 FLR 1059 between UCO Bank Kolkata & another and Central Government Industrial Tribunal cum Labour Court Kanpur Nagar pronounced by the Hon'ble Allahabad High Court has been referred. In the aforesaid Case Law it was observed that the workman was engaged of driving the currency chest Van of the Bank for shifting currency chest to the different branches of the Bank and it was held that there was employer-employee relationship between the Bank and the workman. It is doubtful if the observation made in the aforesaid Case Law can be applied in favour of the workman of this case who was engaged by the Asst. General Manager and not by any notification of appointment issued by the management of the Bank. There is no evidence that the workman was selected as per the procedure for selection of the drivers or staff to be employed in the erstwhile Allahabad Bank. In such scenario it can be otherwise concluded that the aforesaid Case Law pronounced by the Hon'ble Allahabad High Court may not govern the factual aspect of the instant dispute.

In the Case Law 2007 (112) FLR 474 between Indian Drugs & Pharmaceutical Ltd. and workman Indian Drugs and Pharmaceutical Ltd. at Case Para 28 it has been observed by the Hon'ble Supreme Court in the following words:

The respondents have not been able to point out any statutory rule on the basis of which their claim of continuation in service or payment of regular salary can be granted. It is well settled that unless there exists some rule no direction can be issued by the Court for continuation in service or payment of regular salary to a casual, ad hoc, or daily rate employee. Such directions are executive functions, and it is not appropriate for the Court to encroach into the functions of another organ of the State. The Courts must exercise judicial restraint in this connection. The tendency in some Courts/Tribunals to legislate or perform executive functions cannot be appreciated. Judicial activism in some extreme and exceptional situation can be justified, but resorting to it readily and frequently, as has lately been happening, is not only unconstitutional, it is also fraught with grave peril for the judiciary.

In Asif Hameed vs. State of Jammu & Kashmir, this Court observed:

"Before adverting to the controversy directly involved in these appeals we may have a fresh look on the inter se functioning of the three organs of democracy under our Constitution. Although the doctrine of separation

of powers has not been recognized under the Constitution in its absolute rigidity but the Constitution makers have meticulously defined the functions of various organs of the State Legislature, Executive and Judiciary have to function within their own spheres demarcated under the Constitution. No organ can usurp the functions assigned to another. The Constitution trusts to the judgment of these organs to function and exercise their discretion by strictly following the procedure prescribed therein. The functioning of democracy depends upon the strength and independence of each of its organs. The legislature and executive, the two facets of people's will, have all the powers including that of finance. The judiciary has no power over the sword or the purse, nonetheless it has power to ensure that the aforesaid two main organs of the State function within the constitutional limits. It is the sentinel of democracy. Judicial review is a powerful weapon to restrain unconstitutional exercise of power by the legislature and executive. The expanding horizon of judicial review has taken in its fold the concept of social and economic justice. While exercise of powers by the legislature and executive is subject to judicial restraint, the only check on our own exercise of power is the self imposed discipline of judicial restraint. When the State action is challenged, the function of the Court is to examine the action in accordance with law and to determine whether the legislature or the executive has acted within the powers and functions assigned under the Constitution and if not, the Court must strike down the action. While doing so the Court must remain within its self imposed limits. The Court sits in judgment on the action of a co-ordinate branch of the Government. While exercising power of judicial review of administrative action, the Court is not an appellate authority. The Constitution does not permit the Court to direct or advise the executive in matters of policy or to sermonize quo any matter which under the Constitution lies within the sphere of the legislature or executive, provided these authorities do not transgress their constitutional limits or statutory powers".

In view of the spirit of the judgment of the Hon'ble Supreme Court reported in *Indian Drugs and Pharma Ltd. Vs. Workman, I.D.P. (S.C.)* the claim of the claimant for reinstatement is not strong.

Since there is inadequate evidence with regard to appointment of the workman by following process of selection by the management of the Bank his disengagement cannot be held to be either retrenchment or illegal termination in other words the evidence presented on put of the workman does not establish that there was employer-employee relationship between the Bank and workman. The above points are answered against the workman.

3. To what other relief the claimant workman is legally entitled.

There is ample evidence that proves that workman was driving the car owned by then Allahabad Bank during the period from 20/11/1991 to 14/06/1995 though not duly appointed after undergoing regular process of selection.

A long span of time passed after his disengagement after 15/06/1995. Since the claimant claims that he was a diligent worker it is presumable that during interregnum he had avail of the opportunity of engaging him in gainful employment. Law is well settled that even if the workman was retrenched without following 25 F of the ID Act, he cannot be blessed with reinstatement with back wages. Compensation as a remedy can be allowed in favour of the workman. At this distant point of time compensation with mathematical exactitude is not workable and as such, guess work can be reasonably resorted to for compensation. Taking period of work and the whole evidence into consideration it is held that the Indian Bank Management shall deposit one time compensation of Rupees Two lakhs and forty thousand only in the bank account of the claimant within thirty days from the date of publication of the award failing which the Indian Bank shall pay simple interest 8 per cent per annum till the whole amount is cleared.

Parties are left to bear their respective costs.

SOMA SHEKHAR JENA, Presiding Officer

नई दिल्ली, 22 अगस्त, 2022

का.आ. 769.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूनियन बैंक आफ इंडिया के प्रबंधन, संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, जयपुर के पंचाट (संदर्भ सं. 88/2014) को प्रकाशित करती है।

[सं. एल-12012/47/2014-आईआर-(बी-II)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 22nd August, 2022

S.O. 769.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 88/2014) of the *Cent. Govt. Indus. Tribunal-cum-Labour Court*, Kanpur shown in the Annexure, in the industrial dispute between the management of Union Bank of India and their workmen.

[No. L-12012/47/2014-IR(B-II)]

RAJENDER SINGH, Under Secy.

ANNEXURE

**BEFORE SHRI SOMA SHEKHAR JENA, PRESIDING OFFICER CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR**

PRESENT: SOMA SHEKHAR JENA, HJS (Retd.)**I.D. No. 88 of 2014****L-12012/47/2014-IR(B-II) dated 24/07/2014****BETWEEN :**

The Secretary,
Union Bank Employees Union UP,
C/o 628/M-33, Murari Nagar, Faizabad Road,
Lucknow

AND

The General Manager (Field),
Union Bank of India, Vibhuti Khand,
Lucknow-10

AWARD

This award is delivered in respect of the Industrial Dispute stated in the schedule below as communicated to this Tribunal in letter No.12012/47/2014-IR(B-II) dated 24.07.2014 issued by Government of India, Ministry of Labour & Employment.

SCHEDULE

“Whether the action of the management of Union Bank of India, Lucknow in not granting grade of Special Assistant to Mrs. Nisha Maheshwari, SWO posted in Aligarh ignoring her seniority and granting benefit to her junior is just and proper? What relief the concerned workman is entitled to?”

The averments in the claim application are concisely stated as here under:-

Mrs. Nisha Maheshwari S.W.O 'B' posted at Aligarh Main Branch is bonafide member of Union Bank Employees' Union U.P. which is duly registered under the Trade Union Act and the duly elected General Secretary with an authority to seek the intervention of authorities available under the Industrial Disputes Act, 1947 (here-in-after stated in short as the ID Act) presented the industrial dispute. The workman concerned joined the service of bank on 05.05.2005 in clerical cadre. The conditions of settlement govern the procedure of filling up the post of Special Assistant in Branches. In tune with Chapter I of Settlement as circulated by the opposite party vide Staff Cir. No. 5711 dated 10th Dec. 2010, the opposite party invited application from the eligible clerical staff, in terms of FGMO Lucknow Cir. No. FGMO/LKO/344/13 dated 23.01.2013 for the vacancy of Special Assistant at Aligarh Branch. The workman concerned submitted her application to concerned office. The workman concerned was found eligible and was called for interview in terms of para 2.6 of Chapter-II of the Settlement. The interview was conducted at FGMO Lucknow on 26.04.2013 by an Interview Board. The other workman namely Sri Anoop Kujur who joined the Bank's

service in clerical cadre at Gangoli Branch in Ghazipur Region on 15.10.2012 was called for the interview for the same post at Aligarh. He was interviewed on 26.04.2013 at FGMO Varanasi but by a different Interview Board. As per para 2.4 of Chapter-II of the Settlement all posts of Special Assistant are to be filled in on the basis of State-wise Seniority with weightage of the eligible employees in clerical cadre drawing Special Allowance less than that of Special Assistant. The Opposite Party finalized the selection process and declared the list of selected persons for Aligarh station vide FGMO Circular NO. FGMO/LKO/1878/13 dated 17.05.2013. The list shows that a very junior clerical staff namely Sri Anoop Kujur was selected for the post ignoring the experience and seniority of more than 18 years put by the aggrieved workman in the Bank. The aggrieved workman found that a very junior and having nominal working experience was selected because of serious defective approach adopted by the opposite party. Accordingly the workman sought the intervention of Union. The Union wrote letters and discussed with the opposite party but due to their rigid attitude, the matter could not be addressed in fair manner. Accordingly the Union sought the intervention of appropriate authority in terms of I.D. Act. The opposite party did not settle the case and so Government of India decided to refer the case for adjudication to this Hon'ble Court as per above schedule.

The averments on behalf of the O.P are precisely stated as below:-

There is no restriction under statutory rules for establishing two separate committees for conducting interviews. It has been contended that Smt. Nisha Maheswari had willingly participated in the interview and she did not raise any objection against the holding of separate interviews by separate boards. Due to administrative exigencies two separate boards for conducting interviews were constituted considering place of posting of candidates from one area. O.P side has challenged the very nature of the dispute stating that the industrial dispute raised by the union in reality does not carry the ingredients of the Industrial dispute. It is further stated that Smt. Nisha Maheswari was not found suitable for the post of special assistant whereas Shri Anoop was found suitable for the post of special assistant whereas by the board at Varanasi.

The points for determination in this proceeding are as follows:-

1. Whether the claim of the union that Smt. Nisha Maheswari S.W.O posted in Aligarh was legally entitled to be promoted to the cadre of special assistant basing on her seniority in preference to her junior.

It is submitted on behalf of the workman side that when the selection process for appointment of special assistant was commenced Nisha Maheswari had already put in work experience exceeding 10 years where-as the selected person Anoop Kujur had rendered service less than a year but Nisha Maheswari (Here-in-after stated in short as aggrieved workman) was ignored. On behalf of workman side it is pointed out that on 26.04.2013 Nisha Maheswari was interviewed at Lucknow and on the same day that is 26.04.2013 Anoop Kujur was interviewed by a separate board consisting of different members at Varanasi Zonal office of the Bank. On behalf of aggrieved workman conducting the interview of two candidates on 26.04.2013 by two separate boards was certainly violative of fundamental principles of natural justice leading to arbitrariness. It is submitted that there was no provision for objective assessment of the capability and efficiency of the candidates. It is pointed out that Nisha Maheswari was senior to appointed candidate Anoop Kujur and senior candidate is supposed to have better knowledge with regard to banking operations. At this point it appears pertinent to refer to the rules for filling of the post of special Assistant stated in chapter 2 (from paper no. 19/6 & 19/7) Though it is mentioned that in a new station preference will be given to senior most special assistant while filling of the post it is clearly stated higher assignment of special assistant shall be offered on the basis of seniority cum suitability. At this point by referring to the documentary materials at paper no. 20/3, 20/4, 20/5 Nisha Maheswari was not found suitable. For the sake of clarity it is stated that Anoop Kujur was rated as suitable by a board consisting of chief manager, and two senior managers (as found from papers 20/6, 20/7, 20/8, 20/9) whereas aggrieved workman Nisha Maheswari was not recommended by another board consisting of a chief manager and two senior managers. Two of the members had given opinion '*not found suitable*'. Though the board consisted of different members conducting the interview at different places there is no explicit bar against constitution of two separate boards for taking the interview for purpose of the appointment as special assistant. Though it has been urged by the union that this kind of selection process is bound to be afflicted with arbitrariness the apprehension appears to be fallacious without strong logic as one of the boards had not found Nisha Maheswari as suitable for the post of special assistant. At this point it appears pertinent to state that the board members being senior officers were assigned with solemn duty of choosing suitability over un-suitability by using their banking acumen and a tribunal is not expected to replace the opinion of a board by some hypothetical allegation of arbitrariness. In service seniority is not sole criterion for filling of higher post which carry different kinds of responsibility as found from paper no. 19/25. In the present days for competitive market of banking sector giving external weightage to seniority ignoring suitable choices is most likely to lead to devastating consequence. This apart appointing a senior person in a higher post in higher responsibility is an archaic concept and the rules prescribed for appointment of special assistant in reality do not countenance such concept. Though it is contended that suitability is comparative concept in reality it may not be so, the members sitting on the board are likely to explore efficiency blended with suitability.

In view of discussions stated above the point is answered against claimant workman Nisha Maheswari. In other words in the factual scenario stated above it is concluded that Nisha Maheswari is not entitled to claim promotion in preference to the selected candidate Anoop Kujur. However it is stated that Nisha Maheswari in the

meanwhile has been promoted to the grade of special assistant. If that be so, her appointment as special assistant shall not be disturbed in any way solely on this award. Reference stands disposed of with the order stated above.

Parties are left to bear their respective costs.

Let a soft copy be sent to the Ministry and two hard copies of the same will follow in due course of time.

SOMA SHEKHAR JENA, Presiding Officer

नई दिल्ली, 23 अगस्त, 2022

का.आ. 770.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.ई.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम श्रम न्यायालय जबलपुर के पंचाट (संदर्भ संख्या 42/2017) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23.08.2022 को प्राप्त हुआ था।

[सं. एल-22012/116/2016-आईआर-(सीएम-II)]
राजेन्द्र सिंह, अवर सचिव

New Delhi, the 23rd August, 2022

S.O. 770.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 42/2017) of the Central Government Industrial Tribunal-cum-Labour Court JABALPUR as shown in the Annexure, in the industrial dispute between the Management of S.E.C.L. and their workmen, received by the Central Government on 23.08.2022.

[No. L-22012/116/2016 -IR(CM-II)]
RAJENDER SINGH, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/42/2017

Present: P. K. Srivastava, H.J.S..(Retd)

Shri Bhagwat Prasad Dubey,
General Secretary,
Rastriya Colliery Workers Federation
Federation Office-Chirmiri
District Korea (C.G.)

...Workman

Versus

The General Manager, SECL
Hasdeo Area of SECL,
South Jharkhand Colliery,
District Korea (C.G.)

...Management

AWARD

(Passed on 27-7-22)

As per letter dated 9/5/2017 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-22012/116/2016-IR(CM-II). The dispute under reference relates to:

“Whether the action on the part of the management of SECL, Hasdeo Area in dismissing Shri Tulsidas Raha, Ex-Accounts Assistant from service on serious misconduct ground with effect from 16/9/2014 in the decision making process is legal and justified? If not , what relief Shri Tulsidas Raha, the delinquent employee is entitled to? .”

1. After registering the case on the basis of reference, notices were sent to the parties. Both the parties have filed their respective statement of claim/defense.

2. The case of the workman as stated in his statement of claim is that he was working as Cost Assistant in Accounts Cadre. He was assigned job of T.A.Bill passing after retirement of the person who was earlier deputed for this job. A departmental inquiry was conducted against him with respect to the charge of misconduct with an allegation that while working as Account Assistant, he falsified the documents relating to T.A.Bills and increased the amount in voucher.
3. According to the workman, the inquiry conducted was not legal and proper because he was not given the copies of the documents which he required during the inquiry. Also he was not given proper opportunity to defend himself during the inquiry.
4. It is further the case of the workman that charges are not proved against him from the evidence collected during the inquiry and punishment is also disproportionate to the charges. Accordingly, the workman has prayed that setting aside his punishment order, he be reinstated with all consequential benefits.
5. The case of the Management on this issue is mainly that the inquiry conducted was legal and proper. The workman participated during the inquiry. All the documents required by him during the Inquiry was given to him. He cross-examined the witnesses and also produced his defense witness. Also the opportunity of showing cause with respect to the punishment in the light of the finding in the inquiry report was given to the workman, which he availed.
6. According to the Management, the charges are proved against the workman and punishment is not disproportionate. The Management has further requested that the reference be answered against the workman. A preliminary issue was framed in the case as follows:-

“Whether the departmental inquiry conducted against the workman is legal and proper?”

7. On the basis of evidence on record on this preliminary issue the inquiry was held legal and proper and the issue was answered against the workman vide order dated 16-3-2022. This order is part of the award.
8. Thereafter, three additional issues were framed which are as follows:-

1. Whether the charges are proved from the inquiry.?

2. Whether the punishment is dis-proportionate to the charge.?

3. Whether the workman is entitled to any relief?

9. Parties were given opportunity to lead evidence oral and documentary on additional issues. None of the parties filed any evidence nor examined any witness, hence the case was posted for arguments. None appeared from the side of workman on the date of argument, hence argument of Shri A.K.Shashi, learned counsel for the Management were heard. The workman has not preferred any written argument also.

10. ADDITIONAL ISSUE NO.1:-

Before proceeding, the settled preposition of law regarding standard of proof required to prove charge during the departmental inquiry is not beyond reasonable doubt, rather, it is to the extent of reasonable probability is to be seen, whether a charge is proved in the departmental inquiry or not requires to be mentioned as follows:-

- A. **State of A.P. Vs. Sree Rama Rao** (1963) SC 1723 wherein it has been held that :-

“...a disciplinary proceeding is not a criminal trial and that the standard of proof required in a disciplinary inquiry is that of preponderance of probability and not proof beyond reasonable doubt, which is the proof required in a criminal trial.”

- B. In another case **B.C.Chaturvedi Vs. Union of India**(1995) 6 SCC 749, it has been held that :-

“the power of judicial review is meant to ensure that the individual receives fair treatment and not ensure that the conclusion which the authority reaches is necessarily correct in the eye of the Court. The disciplinary authority is the sole Judge of facts. The Court/Tribunal in its power of review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence.”

11. Following charges were levelled against the workman under Certified Standing Orders-

26.1:- Theft or fraud or dishonesty with the business or property of the employer.

26.13:- Falsification in the records of the company, other than company interest.

26.22:- Initially committing breach of Discipline or Committing Act pre-judicial to the interest of the Company.

12. During the inquiry as many as nine witnesses were examined by the management in support of the charge. The Management has also filed and proved as many as 15 exhibits during the inquiry which are mainly records regarding fraudulent payment of TA/DA to the workman in which the applicant workman was instrumental in processing the payments being posted as Accountant. I have gone through the statement of Management witnesses recorded during the inquiry. Their statements establish the charges, hence the finding of the Inquiry Officer regarding proof of charge is affirmed and **Additional Issue No.1 is answered accordingly.**

13. ADDITIONAL ISSUE NO.2:-

The charges proved against the workman are regarding falsification of records, fraudulent payments to the workman during which serious mis-conduct inviting major punishment in the Certified Standing Order, these are acts of moral turpitude also. The Disciplinary Authority has awarded punishment of dismissal to the workman. Additional Evidence also shows that criminal cases CBI Case No.10/2014, No.12/2014, No.9/2014, No.7/2014, No.8/2014, No.11/2014, No.6/2014, and No.13/2014 proceeded against the workman under Section's 120B, 409, 467, 478, 477A and 13B read with 131C & D of Prevention of Corruption Act, 1988 in the Court of Special C.B.I., Raipur (Chhattisgarh) and the workman was convicted with different sentences in all the cases. The settled proposition of law on the point of sentence laid down in different judicial pronouncements is being reproduced as follows:-

In UP State Road Transport Corporation Vs. Gopal Shukla and Others, (2015) 4 LLJ 1, it is held that :-

“Causing loss to Corporation also committing misconduct-such conduct resulting in loss of faith-calls for adequate punishment-There is no scope for mercy. Court below awarding substituting punishment of dismissal with lesser punishment-Not permissible.

In State Bank of India and others Vs. S.N.Goyal (2008) 3 LLJ, 567, the Apex Court held that:-

“Temporary misappropriation of customer's money by Bank employee is a serious misconduct warranting removal from service and tantamount to breach of trust.

In DG, RPF vs. Sai Babu (2003) 4 SCC 331, Hon'ble Apex Court has observed that:

Normally, the punishment imposed by a disciplinary authority should not be disturbed by the High Court or a tribunal except in appropriate cases that too only after reaching a conclusion that the punishment imposed is grossly or shockingly disproportionate, after examining all the relevant factors including the nature of charges proved against, the past conduct, penalty imposed earlier, the nature of duties assigned having due regard to their sensitiveness, exactness expected of an discipline required to be maintained, and the department /establishment which the delinquent person concerned works.”

In United Commercial Bank vs. P.C. Kakkar (2003) 4 SCC 364 Hon'ble Apex Court on review of a long line of cases and the principles of judicial review of administrative action under English law summarized the legal position in the following words:

The common thread running through in all these decisions is that the court should not interfere with the administrators' decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury case the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator. The scope of judicial review is judicial review is limited to the deficiency in decision-making process and not the decision.

To put it differently, unless the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court/tribunal, there is no scope for interference. Further, to shorten litigation it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof.”

In Union of India vs. S.S. Ahluwalia (2007) 7 SCC 257 Hon'ble Supreme Court reiterated the legal position as follows:

“..... The scope of judicial review in the matter of imposition of penalty as a result of disciplinary proceedings is very limited. The court can interfere with the punishment only if it finds the same to be shockingly disproportionate to the charges found to be proved.”

In State of Meghalaya v. Mecken Singh N. Marak (2008) 7 SCC 580 Hon'ble Supreme Court stated that:

“The punishment imposed by the disciplinary authority or the appellate authority unless shocking to the conscience of the court, cannot be subjected to judicial review.

Hon'ble Apex Court in *Administrator, Union Territory of Dadra and Nagar Haveli vs. Gulbhia M. Lad (2010) 2 SCC (L&S) 101* has observed that :

“The legal position is fairly well settled that while exercising the power of judicial review, the High Court or a Tribunal cannot interfere with the discretion exercised by the disciplinary authority, and/or on appeal the appellate authority with regard to the imposition of punishment unless such discretion suffers from illegality or material procedural irregularity or that would shock the conscience of the court/tribunal. The exercise of discretion in imposition of punishment by the disciplinary authority or appellate authority is dependent on host of factors such as gravity of misconduct, past conduct, the nature of duties assigned to the delinquent, responsibility of the position that the delinquent holds, previous penalty, if any, and the discipline required to be maintained in the department or establishment he works. Ordinarily the court or the tribunal would not substitute its opinion on reappraisal of facts.

Hon'ble Apex Court in (2011) 1 Supreme Court Cases (L&S) 721 has observed that:

It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the inquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, the courts will not interfere with findings of fact recorded in departmental inquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or findings, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations

14. In the light of the settled preposition of law, keeping in view the severity of the charges proved and also the fact that the workman was convicted by Criminal Court for these charges as mentioned above, the punishment awarded to the workman cannot be said to be disproportionate to warrant interference by this Tribunal, hence affirming the punishment order, **Additional issue No.2 is answered against the workman.**

15. ADDITIONAL ISSUE NO.3:

In the light of the finding recorded above, the workman is held entitled to no relief. **Additional Issue No.2 is answered accordingly.**

16. On the basis of the above discussion, following award is passed:-

A. The action of the management of SECL, Hasdeo Area in dismissing Shri Tulsidas Raha, Ex-Accounts Assistant from service on serious misconduct ground with effect from 16/9/2014 in the decision making process is held to be legal and justified.

B. The workman is held entitled to no relief.

C. No orders as to costs.

17. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

DATE: 27.7.2022

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 24 अगस्त, 2022

का.आ. 771.—राष्ट्रपति, न्यायाधीश (सेवानिवृत्त) अनिल कुमार को दिनांक 22 अगस्त, 2022 के पूर्वाह्न से 21 अगस्त, 2026 तक 4 वर्षों की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, तक के लिए केंद्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, **लखनऊ** में पीठासीन अधिकारी के पद पर नियुक्त करते हैं।

2. न्यायाधीश (सेवानिवृत्त) अनिल कुमार की पीठासीन अधिकारी, केंद्रीय सरकार औद्योगिक अधिकरण सह-श्रम न्यायालय के पद पर नियुक्ति अधिकरण सुधार अधिनियम, 2021 और उसके तहत बने नियम यानि अधिकरण (सेवा की शर्तें) नियम, 2021 के अनुसार विनियमित की जाएगी।

[सं. अ-19011/04/2022-सीएलएस-II(ई)]

धनंजय शर्मा, अवर सचिव

New Delhi, the 24th August, 2022

S.O. 771.—The President is pleased to appoint Justice (Retd.) Anil Kumar as Presiding Officer of Central Government Industrial Tribunal-cum-Labour Court, Lucknow for a period of 4 years with effect from the forenoon of the 22nd August, 2022 up to 21st August, 2026 or until further orders, whichever is earlier.

2. The appointment of Justice (Retd.) Anil Kumar as Presiding Officer, CGIT-cum-LC shall be regulated in terms of the Tribunal Reforms Act, 2021 and the rules made thereunder, i.e. Tribunals (Conditions of Service) Rules, 2021.

[No. A-19011/04/2022-CLS-II(E)]

DHANADxNJAY SHARMA, Under Secy.